

tests positive may be detained pending verification of a positive drug test result. A drug test confirmation shall be a urine drug test confirmed using gas chromatography/mass spectrometry techniques or such test as the Director of the Administrative Office of the United States Courts after consultation with the Secretary of Health and Human Services may determine to be of equivalent accuracy. The court shall consider whether the availability of appropriate substance abuse treatment programs, or an individual's current or past participation in such programs, warrants an exception in accordance with United States Sentencing Commission guidelines from the rule of section 3565(b), when considering any action against a defendant who fails a drug test administered in accordance with paragraph (4)."

Subsec. (a)(2). Pub. L. 103-322, §§20414(b)(1), 320921(b)(1), amended par. (2) identically, striking out "and" at end.

Subsec. (a)(3). Pub. L. 103-322, §280002, substituted "unlawfully possess a controlled substance" for "possess illegal controlled substances".

Pub. L. 103-322, §§20414(b)(2), 320921(b)(2), amended par. (3) identically, substituting "; and" for period at end.

Subsec. (a)(4). Pub. L. 103-322, §320921(b)(3), added par. (4) relating to attendance at a rehabilitation program in the case of conviction of a domestic violence crime.

Pub. L. 103-322, §20414(b)(3), added at end of subsec. (a) par. (4) relating to conditions of probation concerning drug use and testing.

1992—Subsec. (b)(21), (22). Pub. L. 102-521 added par. (21) and redesignated former par. (21) as (22).

1990—Subsec. (a). Pub. L. 101-647, §3584(1), substituted "defendant" for "defendent" in last sentence.

Subsec. (b)(3). Pub. L. 101-647, §3584(2), substituted "under sections 3663 and 3664" for "pursuant to the provisions of section 3663 and 3664" and "section 3663(a)" for "3663(a)".

1988—Subsec. (a)(2). Pub. L. 100-690, §7086, inserted " , unless the court finds on the record that extraordinary circumstances exist that would make such a condition plainly unreasonable, in which event the court shall impose one or more of the other conditions set forth under subsection (b)".

Subsec. (a)(3). Pub. L. 100-690, §7303(a)(1), added par. (3).

Subsec. (b)(3). Pub. L. 100-690, §7110, substituted "3663 and 3664 (but not subject to the limitations of 3663(a))" for "3556".

Subsec. (b)(20), (21). Pub. L. 100-690, §7305(a), added par. (20) and redesignated former par. (20) as (21).

1987—Subsec. (b)(12). Pub. L. 100-182, §18, inserted "(including a facility maintained or under contract to the Bureau of Prisons)" after "facility".

Subsec. (c). Pub. L. 100-182, §10, struck out comma after "The court may" and substituted "the modification of probation and" for "revocation or modification of probation".

1986—Subsec. (b)(11). Pub. L. 99-646, §11(a), struck out "in section 3581(b)" after "the offense".

Subsec. (c). Pub. L. 99-646, §12(a), struck out " , after a hearing" after "court may" and inserted "the provisions of the Federal Rules of Criminal Procedure relating to revocation or modification of probation" after "pursuant to".

#### EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107-273, div. B, title IV, §4002(c)(1), Nov. 2, 2002, 116 Stat. 1808, provided that the amendment made by section 4002(c)(1) is effective Oct. 11, 1996.

Pub. L. 107-273, div. B, title IV, §4002(e)(12), Nov. 2, 2002, 116 Stat. 1811, provided that the amendment made by section 4002(e)(12) is effective Nov. 26, 1997.

#### EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-119 effective 1 year after Nov. 26, 1997, see section 115(c)(1) of Pub. L. 105-119, set out as a note under section 3521 of this title.

#### EFFECTIVE DATE OF 1996 AMENDMENTS

Amendment by section 308(g)(10)(E) of Pub. L. 104-208 effective, with certain transitional provisions, on the

first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104-208, set out as a note under section 1101 of Title 8, Aliens and Nationality.

Amendment by Pub. L. 104-132 to be effective, to extent constitutionally permissible, for sentencing proceedings in cases in which defendant is convicted on or after Apr. 24, 1996, see section 211 of Pub. L. 104-132, set out as a note under section 2248 of this title.

#### EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-690, title VII, §7303(d), Nov. 18, 1988, 102 Stat. 4464, provided that: "The amendments made by this section [amending this section and sections 3565, 3583, 4209, and 4214 of this title] shall apply with respect to persons whose probation, supervised release, or parole begins after December 31, 1988."

#### EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-182 applicable with respect to offenses committed after Dec. 7, 1987, see section 26 of Pub. L. 100-182, set out as a note under section 3006A of this title.

#### EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99-646, §11(b), Nov. 10, 1986, 100 Stat. 3594, provided that: "The amendment made by this section [amending this section] shall take effect on the date of the taking effect of such section 3563(b)(11) [Nov. 1, 1987]."

Pub. L. 99-646, §12(c)(1), Nov. 10, 1986, 100 Stat. 3594, provided that: "The amendments made by subsection (a) [amending this section] shall take effect on the date of the taking effect of such section 3563(c) [Nov. 1, 1987]."

#### EFFECTIVE DATE

Section effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of this section, see section 235(a)(1) of Pub. L. 98-473, set out as a note under section 3551 of this title.

### § 3564. Running of a term of probation

(a) COMMENCEMENT.—A term of probation commences on the day that the sentence of probation is imposed, unless otherwise ordered by the court.

(b) CONCURRENCE WITH OTHER SENTENCES.—Multiple terms of probation, whether imposed at the same time or at different times, run concurrently with each other. A term of probation runs concurrently with any Federal, State, or local term of probation, supervised release, or parole for another offense to which the defendant is subject or becomes subject during the term of probation. A term of probation does not run while the defendant is imprisoned in connection with a conviction for a Federal, State, or local crime unless the imprisonment is for a period of less than thirty consecutive days.

(c) EARLY TERMINATION.—The court, after considering the factors set forth in section 3553(a) to the extent that they are applicable, may, pursuant to the provisions of the Federal Rules of Criminal Procedure relating to the modification of probation, terminate a term of probation previously ordered and discharge the defendant at any time in the case of a misdemeanor or an infraction or at any time after the expiration of one year of probation in the case of a felony, if it is satisfied that such action is warranted by the conduct of the defendant and the interest of justice.

(d) EXTENSION.—The court may, after a hearing, extend a term of probation, if less than the

maximum authorized term was previously imposed, at any time prior to the expiration or termination of the term of probation, pursuant to the provisions applicable to the initial setting of the term of probation.

(e) SUBJECT TO REVOCATION.—A sentence of probation remains conditional and subject to revocation until its expiration or termination.

(Added Pub. L. 98-473, title II, §212(a)(2), Oct. 12, 1984, 98 Stat. 1994; amended Pub. L. 99-646, §13(a), Nov. 10, 1986, 100 Stat. 3594; Pub. L. 100-182, §11, Dec. 7, 1987, 101 Stat. 1268.)

#### REFERENCES IN TEXT

The Federal Rules of Criminal Procedure, referred to in subsec. (c), are set out in the Appendix to this title.

#### PRIOR PROVISIONS

For a prior section 3564, applicable to offenses committed prior to Nov. 1, 1987, see note set out preceding section 3551 of this title.

#### AMENDMENTS

1987—Subsec. (c). Pub. L. 100-182 inserted “, pursuant to the provisions of the Federal Rules of Criminal Procedure relating to the modification of probation,” after “may”.

1986—Subsec. (b). Pub. L. 99-646 substituted provision that the term of probation does not run while the defendant is imprisoned in connection with a conviction for a Federal, State, or local crime unless the imprisonment is for a period of less than thirty consecutive days, for provision that the term of probation does not run during any period in which the defendant is imprisoned for a period of at least thirty consecutive days in connection with a conviction for a Federal, State, or local crime.

#### EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-182 applicable with respect to offenses committed after Dec. 7, 1987, see section 26 of Pub. L. 100-182, set out as a note under section 3006A of this title.

#### EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99-646, §13(b), Nov. 10, 1986, 100 Stat. 3594, provided that: “The amendments made by this section [amending this section] shall take effect on the date of the taking effect of such section 3564 [Nov. 1, 1987].”

#### EFFECTIVE DATE

Section effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of this section, see section 235(a)(1) of Pub. L. 98-473, set out as a note under section 3551 of this title.

### § 3565. Revocation of probation

(a) CONTINUATION OR REVOCATION.—If the defendant violates a condition of probation at any time prior to the expiration or termination of the term of probation, the court may, after a hearing pursuant to Rule 32.1 of the Federal Rules of Criminal Procedure, and after considering the factors set forth in section 3553(a) to the extent that they are applicable—

- (1) continue him on probation, with or without extending the term or modifying or enlarging the conditions; or
- (2) revoke the sentence of probation and resentence the defendant under subchapter A.

(b) MANDATORY REVOCATION FOR POSSESSION OF CONTROLLED SUBSTANCE OR FIREARM OR REFUSAL TO COMPLY WITH DRUG TESTING.—If the defendant—

(1) possesses a controlled substance in violation of the condition set forth in section 3563(a)(3);

(2) possesses a firearm, as such term is defined in section 921 of this title, in violation of Federal law, or otherwise violates a condition of probation prohibiting the defendant from possessing a firearm;

(3) refuses to comply with drug testing, thereby violating the condition imposed by section 3563(a)(4);<sup>1</sup> or

(4) as a part of drug testing, tests positive for illegal controlled substances more than 3 times over the course of 1 year;

the court shall revoke the sentence of probation and resentence the defendant under subchapter A to a sentence that includes a term of imprisonment.

(c) DELAYED REVOCATION.—The power of the court to revoke a sentence of probation for violation of a condition of probation, and to impose another sentence, extends beyond the expiration of the term of probation for any period reasonably necessary for the adjudication of matters arising before its expiration if, prior to its expiration, a warrant or summons has been issued on the basis of an allegation of such a violation.

(Added Pub. L. 98-473, title II, §212(a)(2), Oct. 12, 1984, 98 Stat. 1995; amended Pub. L. 100-690, title VI, §6214, title VII, §7303(a)(2), Nov. 18, 1988, 102 Stat. 4361, 4464; Pub. L. 101-647, title XXXV, §3585, Nov. 29, 1990, 104 Stat. 4930; Pub. L. 103-322, title XI, §110506, Sept. 13, 1994, 108 Stat. 2017; Pub. L. 107-273, div. B, title II, §2103(a), Nov. 2, 2002, 116 Stat. 1793.)

#### REFERENCES IN TEXT

The Federal Rules of Criminal Procedure, referred to in subsec. (a), are set out in the Appendix to this title.

Section 3563(a)(4), referred to in subsec. (b)(3), probably means the par. (4) of section 3563(a) added by section 20414(b)(3) of Pub. L. 103-322, which was renumbered par. (5) by Pub. L. 104-132, title II, §2031(C), Apr. 24, 1996, 110 Stat. 1227.

#### PRIOR PROVISIONS

For a prior section 3565, applicable to offenses committed prior to Nov. 1, 1987, see note set out preceding section 3551 of this title.

#### AMENDMENTS

2002—Subsec. (b)(4). Pub. L. 107-273 added par. (4).

1994—Subsec. (a). Pub. L. 103-322, §110506(a)(2), struck out concluding sentence which read as follows: “Notwithstanding any other provision of this section, if a defendant is found by the court to be in possession of a controlled substance, thereby violating the condition imposed by section 3563(a)(3), the court shall revoke the sentence of probation and sentence the defendant to not less than one-third of the original sentence.”

Subsec. (a)(2). Pub. L. 103-322, §110506(a)(1), substituted “resentence the defendant under subchapter A” for “impose any other sentence that was available under subchapter A at the time of the initial sentencing”.

Subsec. (b). Pub. L. 103-322, §110506(b), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows:

“(b) MANDATORY REVOCATION FOR POSSESSION OF A FIREARM.—If the defendant is in actual possession of a firearm, as that term is defined in section 921 of this

<sup>1</sup> See References in Text note below.